STATE OF MICHIGAN

COURT OF APPEALS

ANTHONY P. FORNARI,

Plaintiff-Appellant,

v

GREGORY LEE HOOVER and MIDWEST FIBERGLASS POOL DISTRIBUTORS,

Defendants-Appellees.

UNPUBLISHED
February 8, 2007

No. 265813
Genesee Circuit Court
LC No. 04-078667-NI

Before: Sawyer, P.J., and Fitzgerald and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting a directed verdict in favor of defendants in this negligence suit arising from a motor vehicle accident. Because plaintiff created a justiciable issue of fact on causation, we reverse and remand for trial. This case is being decided without oral argument under MCR 7.214(E).

Plaintiff argues that the trial court erred in granting a directed verdict in favor of defendants based on the issue of proximate cause because there was evidence that defendant Gregory Hoover's vehicle and trailer were stopped without brake lights or turning signal being activated at the time of the accident when plaintiff caught his leg on the rear of the trailer as he drove his motorcycle in avoidance of the trailer.

We review a decision on a motion for a directed verdict de novo with the evidence considered in the light most favorable to the nonmoving party. *Zsigo v Hurley Med Ctr*, 475 Mich 215, 220-221; 716 NW2d 220 (2006). The elements of a negligence claim are that: (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the plaintiff was injured, and (4) the defendant's breach caused the plaintiff's injuries. *Henry v Dow Chemical Co*, 473 Mich 63, 71-72; 701 NW2d 684 (2005). Proof of causation requires proof of both cause in fact and proximate cause. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 496; 668 NW2d 402 (2003). However, a defendant's negligence cannot be a proximate cause of a plaintiff's injuries unless it was a cause in fact. *Craig v Oakwood Hosp*, 471 Mich 67, 87; 684 NW2d 296 (2004). Cause in fact may be established by reasonable inferences from circumstantial evidence, but not by mere speculation. *Wiley, supra* at 496. Accordingly, proof of causation in fact "requires more than a mere possibility or a plausible explanation." *Craig, supra* at 87. Rather, to present sufficient evidence of causation, a plaintiff must present substantial evidence that "more likely than not, but for the defendant's conduct, the plaintiff's

injuries would not have occurred." *Skinner v Square D Co*, 445 Mich 153, 164-165; 516 NW2d 475 (1994).

The accident at issue occurred on Torrey Road near its intersection with Cook. Plaintiff testified that Hoover's truck and empty low riding trailer were stopped at the time of the accident and that neither had brake lights or turn signal activated. A permissible inference from the evidence presented is that defendant intended to turn onto Cook. In viewing the evidence in a light most favorable to him, *Zsigo, supra* at 220-221, it must be accepted that neither the brake lights nor the turn signals on either vehicle were activated at the time of the accident. In addition, during trial, defendant allowed the inference to be created that the trailer lights were not operative due to a loose electrical connection to the trailer. Defendant further testified by deposition introduced at the trial that he was relying on the trailer taillights to provide notice when he anticipated a turn. This testimony also creates the inference that defendant's trailer did not have operable turn signals.

At trial, Dr. Pachella, plaintiff's perception expert, provided testimony on observation and reactions with respect to stopped and slowing vehicles. He also testified on the necessity of brake lights and turn signals to aid in correct motor vehicle operation perceptions. The trial court observed that in Dr. Pachella's opinion, under the circumstances present, it could certainly be possible that Hoover's actions or inactions were the proximate cause of the accident. Although accepting this expert opinion, the trial court believed that Dr. Pachella's opinion on causation "hinged on the question of whether or not Mr. Hoover was in fact stopped . . . ." The trial court then engaged in a factual analysis of the evidence surrounding whether Hoover's truck and trailer were stopped at the time of the accident. During this exercise, the trial court questioned defense counsel regarding his recollection of the testimony. Defense counsel advised the court, "He absolutely did not testify that he knew it was stopped." Counsel's confirmation cemented the court's view that the evidenced failed to establish the requisite fact for signal failures and granted the motion for directed verdict.

Again, we point out that, a trial court's decision whether to grant a motion for directed verdict is reviewed de novo, considering all evidence and reasonable inferences in the light most favorable to the nonmoving party and granting the motion only if reasonable minds could not perceive the existence of a genuine factual question. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997). Contrary to the view of the trial court, after reviewing the record, we conclude that the record evidence is sufficient to create a reasonable inference that Hoover's truck and trailer were stopped prior to plaintiff's evasive maneuver. Supporting the inference is plaintiff's clear testimony both on direct and cross-examination that Hoover's truck and trailer were stopped prior to the accident. Moreover, the deposition testimony introduced at trial created inferences of the malfunction of lights and the absence of turn signals. Stated otherwise, our review of the evidence reveals that the location of the accident, both plaintiff's and Hoover's testimony, and Dr. Pachella's testimony at trial created a reasonable inference that Hoover's vehicle and trailer were stopped in the intersection, most likely for turning. The trial

court did err in granting a directed verdict to defendants.

Reversed and remanded. We do not retain jurisdiction in this matter.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Pat M. Donofrio